



Revenue Interim Committee

67th Montana Legislature

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TO: Committee Members
FROM: Jaret Coles, Staff Attorney
RE: Administrative Rule Activity
DATE: November 16, 2022

Department of Revenue

Proposal and Adoption Notices are available on the Internet:

Department of Revenue notices can be found on the Secretary of State's website at <http://www.mtrules.org>. Under the Montana Administrative Register heading, type the number "42" in the "Search by Notice No." box and click on the "Go" icon.

Notice of Proposed Rule:

Property Taxation -- 2023 Personal Property Depreciation Schedules and Trend Tables. [MAR 42-1065](#). A public hearing will be held on November 28, 2022, and the public comment period ends on December 5, 2022. The Department proposes to amend two rules to update the authority of the web-based [Personal Property Depreciation Schedules and Trend Tables](#) publication (publication), adopted and incorporated by reference in the rules, to the 2023 version. The publication is updated annually, effective January 1, and is located within the Department's website. The 2023 publication reflects changes in personal property and industrial machinery and equipment depreciation and trend factoring data in the Department's valuation manuals and guides since last year.

Staff Comment: According to the Department, the valuation data source, which the Department has adopted and incorporated into the rules is unavailable until the third calendar quarter of any year.

Corporate Income Taxation -- Revisions To Railroad Income Apportionment Factors. [MAR 42-1064](#). A public hearing will be held on November 28, 2022, and the public comment period ends on December 5, 2022. The Department proposes to amend three rules and repeal three rules effective January 1, 2023. Under the proposed changes, the Department will apply only the receipts factor provided in the amended rule and the numerator and denominator for railroads will be based on data that is verifiable and annually reported to the federal Surface Transportation Board and the Montana Public Service Commission.

Staff Comment: The updates are effective for the upcoming cycle beginning January 1, 2023.

Property Taxation -- Agricultural Commodity Prices and Values. [MAR 42-1063](#). A public hearing will be held on November 28, 2022, and the public comment period ends on December 5, 2022. The Department proposes to amend one rule with an effective date of January 1, 2023. The amendment updates the years, prices, and values for the upcoming reappraisal cycle that begins January 1, 2023. The Department's use of the Montana Agricultural Statistics as its data source is required by 15-7-201, MCA. The proposed amendments update current commodity prices and production data for the base period, the minimum value of irrigated land based on the new commodity price, the state-wide grazing productivity average, the base period references, the value of the one acre beneath a residence on agricultural land, and the minimum carrying capacity of an animal unit month (AUM) for grazing land to qualify as agricultural land for the upcoming reappraisal cycle.

Staff Comment: According to the Department, the commodities data that the Department receives from the United States Department of Agriculture National Agricultural Statistics Service, which is used to update the commodity prices and values in the rule, is unavailable until the third calendar quarter of any year.

Property Taxation -- Updates of the Montana Reappraisal Plan and Classification and Valuation Manuals. [MAR 42-1062](#). A public hearing will be held on November 28, 2022, and the public comment period ends on December 5, 2022. The Department proposes to amend one rule to update the dates of the [Montana Reappraisal Plan](#), the [Montana Residential, Commercial, and Industrial Property Classification and Valuation Manual](#), the [Montana Agricultural Land Classification and Valuation Manual](#), and the [Montana Forest Land Classification and Valuation Manual](#).

Staff Comment: The updates are effective for the upcoming cycle beginning January 1, 2023.

Adopted/Amended Rules:

Individual Income Taxation -- Montana Education Savings Plans (529 plans) -- [House Bill No. 129 \(2021\)](#). [MAR 42-1061](#). Adopted September 13, 2022. A public hearing was held, and no testimony or comments were received. The Department amended two rules and repealed one rule regarding 529 plans as proposed. Both amendments implement items that were directly provided for in [House Bill No. 129](#), including the requirement that an account be held for at least one year and the ability to use account funds for more than just "higher" education costs. The repeal eliminated a redundancy by deleting a rule that simply restated the Montana Code Annotated.

Tax Administration -- Extension of Deadlines for a Taxpayer to Appeal an Audit Determination or a Final Determination. [MAR 42-1057](#). Adopted August 30, 2022. A public hearing was held and public comment was received from two individuals. The Department amended one rule dealing with both informal review and review by the Department's Office of Dispute Resolution (ODR) as proposed.

Income Taxation -- Multistate Tax Commission's Model Statute for Reporting Adjustments to Federal Taxable Income and Federal Partnership Audit Adjustments -- [House Bill No. 53 \(2021\)](#). [MAR 42-1056](#). Adopted August 30, 2022. A public hearing was held, and no testimony or comments were received. The Department amended two rules to implement [House Bill No. 53](#), which standardized reporting adjustments to federal taxable income and partnership audit adjustments while also allowing a partnership to pay state adjustments to federal changes at the partnership level instead of the partner level.

Property Taxation -- Tribal Government Applications for Temporary Property Tax Exemptions -- [Senate Bill No. 214 \(2021\)](#). [MAR 42-1055](#). Adopted September 13, 2022. A public hearing was held and testimony and public comment was received from one individual. Based on the public comment received, the Department further amended one rule to implement [Senate Bill No. 214](#), which requires the Department to notify an impacted county when a temporary property tax exemption of property is in application status for conversion to tribal trust property. [Senate Bill No. 214](#) also added a tax recapture provision for applications that have been denied trust status or have taken longer than five years for the federal government to process.

Property Taxes -- Property Tax Exemption Process Revisions. [MAR 42-1054](#). Adopted September 13, 2022. One person attended the public hearing while another person submitted written comments. The Department adopted one rule and amended one rule regarding governmental, charitable, and educational categories of tax-exempt property. The amendments incorporate the statutory exemptions that are subject to the requirements of the exemption application process and provide a description of the process itself. The new rule focuses on the application process.

Supplemental Information:

[2-4-305](#). Requisites for validity -- authority and statement of reasons.

(11) (a) In the year preceding the year in which the legislature meets in regular session, *an agency may not adopt a rule between October 1 through the end of the year.*

(b) This subsection (11) *does not apply to:*

(i) an emergency rule adopted under **2-4-303**; or

(ii) *a rule adopted for implementation of a program or policy if the unavailability of information, guidance, or notice precluded adoption of the rule before October 1.* A rule may only be exempted under this subsection (11)(b)(ii) if the notice required under **2-4-302(1)(a)** provides a statement explaining why the unavailability of information, guidance, or notice precluded adoption of the rule before October 1. (emphasis added)